

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

BNSF RAILWAY COMPANY,)	
)	
Plaintiff,)	
)	Case No. 2:22-CV-00068-RLW
v.)	
)	
PAULINE MAGIN, et al.,)	
)	
Defendants.)	

**BNSF’S STATEMENT OF UNCONTROVERTED MATERIAL FACTS
IN SUPPORT OF ITS FIRST MOTION FOR PARTIAL SUMMARY JUDGMENT**

In support of its concurrently filed First Motion for Partial Summary Judgment, BNSF Railway Company (“BNSF”) submits the following Statement of Uncontroverted Material Facts:

BACKGROUND

1. Angelika Salazar, Ngoc Pham, Estevan Carreon, Tami Lakey, Kimberly Howard, Noel Lucero, Sherri Schwanz, and Allen Gallaway (collectively the “Signatory Passengers”) have each sued BNSF in the Circuit Court of Chariton County, Missouri, each respectively claiming damages for personal injuries. [Docs. 9-1, 9-3, 9-4, and 9-5].

2. These suits against BNSF stem from an incident that occurred on June 27, 2022, while each of the Signatory Passengers were traveling on Amtrak Train 4, also known as the Southwest Chief. [*Id.*].

3. Train 4 was traveling from Los Angeles to Chicago when it struck a dump truck obstructing U.S. Department of Transportation Crossing No. 005284Y near Mendon, Missouri. [*Id.*].

4. The collision with the dump truck caused Train 4 to derail. [*Id.*].

5. At the time of the collision and derailment, the Amtrak train was traveling on tracks owned by BNSF. [*Id.*].

6. Amtrak is not a named party in the Signatory Passengers' state court actions. [*Id.*].

THE ARBITRATION AGREEMENT

7. To purchase a ticket from Amtrak, customers must affirmatively accept Amtrak's Terms and Conditions, which include a mutually binding agreement to arbitrate claims between the customer and Amtrak (the "Arbitration Agreement"). [Exhibit A, Declaration of Sunil D. Tewari, at ¶ 5].

8. When making an online ticket purchase through Amtrak's website or app, before they can complete their purchase, passengers must click a box acknowledging that they "have read and agree[d] to the terms and conditions, including the binding arbitration agreement..." This provision also contains a link directly to the Terms and Conditions. [*Id.* at ¶¶ 6-8; Exhibits A-1 & A-2].

9. The Signatory Passengers respectively agreed to versions 2.9.13, 2.9.14, or 2.9.16 of the Terms and Conditions, each of which are identical in regard to the Arbitration Agreement. [Ex. A at ¶¶ 10-39; Exhibits A-4, A-10 & A-12].

10. When a customer agrees to the Terms and Conditions, Amtrak's system makes note of it – along with the method by which the ticket was purchased – and it is reflected with its timestamp on the Passenger Name Reservation ("PNR"). [Exhibits A-3, A-5, A-8, A-9, A-11, A-13, A-14 & A-15].

11. Further, Amtrak emails receipts along with the tickets that state "This ticket is a contract of carriage which includes specific terms and conditions and a binding arbitration agreement

between Amtrak and the ticket holder. The terms and conditions and arbitration agreement are available at [Amtrak.com/terms-and-conditions.html](https://www.amtrak.com/terms-and-conditions.html).” [Ex. A at ¶ 9].

12. Angelika Salazar purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on June 17, 2022. [Ex. A at ¶¶ 10-12; Exs. A-3 & A-4].

13. Ngoc Pham purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on May 26, 2022. [Ex. A at ¶¶ 13-15; Exs. A-4 & A-5].

14. Estevan Carreon purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on May 27, 2022. [Ex. A at ¶¶ 22-24; Exs. A-4 & A-8].

15. Tami Lakey purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on March 18, 2022. [Ex. A at ¶¶ 25-27; Exs. A-9 & A-10].

16. Kimberly Howard purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on April 12, 2022. [Ex. A at ¶¶ 28-30; Exs. A-11 & A-12].

17. Noel Lucero purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on May 25, 2022. [Ex. A at ¶¶ 31-33; Exs. A-4 & A-13].

18. Sherri Schwanz purchased a ticket online to travel on Train 4 and affirmatively accepted the Terms and Conditions on April 12, 2022. [Ex. A at ¶¶ 34-36; Exs. A-4 & A-14].

19. Allen Gallaway, using the Amtrak app – either purchased for himself, or had Kimberly Howard purchase for him – a ticket to travel on Train 4, and Mr. Gallaway affirmatively accepted the Terms and Conditions on his own – or Ms. Howard affirmatively accepted the Terms and Conditions for him – on May 27, 2022. [Ex. A at ¶¶ 37-39; Exs. A-4 & A-15; Doc. 47-2].

BNSF AND AMTRAK'S RELATIONSHIP

20. BNSF and Amtrak have an agreement whereby BNSF acts as a host railroad for Amtrak and permits Amtrak to operate its trains over BNSF's tracks. [Exhibit B, Declaration of Adrienne Gaston at ¶¶ 5-6].

21. In exchange, Amtrak agrees to indemnify BNSF against claims arising from Amtrak's operations over BNSF's tracks. [*Id.* at ¶¶ 6-7].

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 12th day of January 2022, a true and accurate copy of the foregoing was filed through the Court's electronic filing system, which will serve notification upon all interested parties.

/s/ Sean P. Hamer

Attorney